

OA 91 Criminal Complaint

E-FILING

United States District Court

NORTHERN

DISTRICT OF

2008 JUL 15 PM 10 CALIFORNIA

UNITED STATES OF AMERICA
V.
LINHBERGH CARLOS ARCEO

RICHARD W. WIEKING
CRIMINAL COMPLAINT
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

Case Number:

08-70440 HRL

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state that the following is true and correct to the best of my knowledge and belief. On or about July 12, 2008 in San Benito County, in
 the Northern District of California defendant(s) did,

(Track Statutory Language of Offense)

having been previously convicted of a crime punishable by a term of imprisonment exceeding one year, knowingly possess a firearm, that is, a 9 mm pistol Model 5904, serial number TES1356, in and affecting interstate commerce,

in violation of Title 18 _____ United States Code, Section(s) 922(g)(1) _____

- a. Maximum prison sentence - 10 years
- b. Maximum fine - \$250,000
- c. Maximum supervised release term - 5 years
- d. Mandatory special assessment - \$100

I further state that I am a(n) Special Agent of F.B.I. and that this complaint is based on the following facts:

Continued on the attached sheet and made a part hereof:

Approved
As To
Form:
AUSA

Sworn to before me and subscribed in my presence,

Date

HOWARD R. LLOYD

Name & Title of Judicial Officer

Yes No

Name/Signature of Complainant

at San Jose, CA

City and State

Signature of Judicial Officer

AFFIDAVIT OF RYAN DWYER IN SUPPORT OF CRIMINAL COMPLAINT

I, Ryan Dwyer, Special Agent of the Federal Bureau of Investigation (FBI), Department of Justice, Campbell, California, being first duly sworn, depose and say:

INTRODUCTION

1. This affidavit is made in support of a criminal complaint and arrest warrant for LINHBERGH CARLOS ARCEO, who is currently in custody on state charges as noted in paragraphs 11 and 12 below. Based on the following facts, there is probable cause to believe that ARCEO has violated 18 U.S.C. § 922(g)(1), unlawful possession of a firearm by a felon.

2. Title 18, United States Code, Section 922 provides in

part:

(g) It shall be unlawful for any person-

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

AGENT BACKGROUND

3. I am an investigative or law enforcement officer of the United States within the meaning of Title 18, United States Code, § 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of and make arrests for offenses enumerated in 18 U.S.C. § 2516.

FACTS SUPPORTING PROBABLE CAUSE

4. On 07/12/2008 at approximately 4:30 p.m., Deputy Lobdell, San Benito Sheriff's Office observed a red Dodge pickup truck, bearing California license plate 7E70429, traveling at a high rate of speed eastbound on Hawkins Street towards Prospect Avenue in Hollister, California. Deputy Lobdell, who was in an unmarked Sheriff's Office vehicle, contacted

1 Sergeant Uribe, San Benito Sheriff's Office. Sergeant Uribe, who was operating a marked
2 Sheriff's Office vehicle, responded to the area.

3 5. After observing the pickup truck commit several Vehicle Code violations, Sergeant
4 Uribe initiated a traffic stop on the vehicle. Sergeant Uribe contacted the driver, later identified
5 as the defendant, LINHBERGH CARLOS ARCEO, and requested his drivers license and
6 registration. There were no other occupants in the vehicle. ARCEO was sweating profusely, his
7 hands were shaking violently, and his responses were rapid and mumbled.

8 6. Based on his training and experience, Sergeant Uribe believed that ARCEO was
9 under the influence of a central nervous system stimulant, to wit, methamphetamine. ARCEO
10 was placed under arrest for driving while under the influence of a controlled substance, and
11 placed in Sergeant Uribe's patrol car.

12 7. During a search incident to ARCEO's arrest conducted on the red pickup, Sergeant
13 Uribe lifted the driver's side floor mat and observed a bulge underneath the carpet directly
14 beneath the gas and brake pedals. When he lifted the carpet, Uribe observed a black Smith and
15 Wesson 9 mm handgun which he photographed in place. Sergeant Uribe then removed the
16 magazine, which contained rounds and pulled the slide to the rear and determined that there was
17 no ammunition in the chamber. The weapon was then collected as evidence and secured in the
18 trunk of Sergeant Uribe's vehicle. Sergeant Uribe's search also revealed several concealed
19 compartments in the vehicle.

20 8. The red pickup truck described above is registered to VERONICA LILIANA
21 ARCEO, 14504 Wheatstone Avenue, Norwalk, California. VERONICA ARCEO is believed to
22 be LINHBERGH CARLOS ARCEO's wife.

23 9. The firearm described above is currently in the custody of UNET agents and is
24 described as a Smith and Wesson 9mm pistol, Model 5904, Serial Number TES 1356. To my
25 knowledge, Smith and Wesson has never manufactured handguns in the state of California.
26 Therefore, this firearm crossed interstate lines affecting interstate commerce.

ARCEO'S PERTINENT CRIMINAL HISTORY

1 10. As of 07/14/2008, ARCEO's Criminal History report as maintained by the
2 California Law Enforcement Telecommunications System indicates multiple felony convictions,
3 including the following:

4 a) April 1993: ARCEO was convicted in Santa Clara County Superior Court of
5 California Health and Safety Code Section 11360(a), selling or furnishing marijuana. ARCEO
6 received a suspended sentence of six months in jail, and two years of probation.

7 b) October 1993: ARCEO was convicted in Alameda County Superior Court of §
8 11360(a) H & S, providing marijuana in excess of one ounce. ARCEO was sentenced to one
9 year in jail, and three years of probation, to run concurrently.

10 c) July 1996: ARCEO was convicted in Alameda County Superior Court in
11 Livermore, California of § 11379 H & S, transportation and sale of a controlled substance.
12 ARCEO was sentenced to two years in prison.

13 d) November 1999: ARCEO was convicted in Santa Clara County Superior Court of
14 § 11379.6(a), manufacturing a controlled substance. ARCEO was sentenced to five years in
15 prison.

PENDING STATE OF CALIFORNIA CHARGES

17 11. ARCEO is currently in custody in the San Benito County Jail, Hollister,
18 California based on the arrest described above. His pending state charges include California
19 Penal Code § 12025(a), carrying a concealed weapon in a vehicle; § 12021(a)(1) P.C., felon in
20 possession of a firearm; § 11550(a) H & S, being under the influence of a controlled substance; §
21 11550(e) H & S, possession of a firearm while under the influence of a controlled substance; and
22 § 12022.1(b) P.C., committing a secondary offense while on bail.

23 12. Additionally, at the time of ARCEO's arrest described above, he was on bail for
24 § 459 P.C. (burglary) charges pending in Santa Clara County, California.

CONCLUSION

26 13. Based on the aforementioned, I believe that there is probable cause to believe
27 that LINHBERGH CARLOS ARCEO is a previously convicted felon and was in possession of a
28 firearm affecting interstate commerce, to wit: a Smith and Wesson 9 mm pistol, in violation of

1 18 U.S.C. § 922(g)(1). Accordingly, the government requests the issuance of a no-bail arrest
2 warrant for LINHBERGH CARLOS ARCEO.

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6 RYAN DWYER
7 Special Agent
Federal Bureau of Investigation
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14 Sworn and subscribed to before me this
15 day of July 2008
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HONORABLE HOWARD R. LLOYD
United States Magistrate Judge